



7710-12

POSTAL SERVICE

39 CFR Part 265

Production or Disclosure of Material or Information

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending its regulations concerning compliance with the Freedom of Information Act (FOIA) to implement the changes to the procedures for the disclosure of records and for engaging in dispute resolution required by the FOIA Improvement Act of 2016. As part of this process, the Postal Service is also restructuring the regulations setting forth its FOIA procedures, without substantive change, to make them easier for members of the public to understand and use.

DATES: These regulations are effective December 27, 2016.

ADDRESSES: Questions or comments on this action are welcome. Mail or deliver written comments to: Michael Elston, Associate General Counsel and Chief Ethics & Compliance Officer, 475 L'Enfant Plaza SW, Room 6000, Washington, DC 20260-1135.

FOR FURTHER INFORMATION CONTACT: Natalie A. Bonanno, Chief Counsel, Federal Compliance, natalie.a.bonanno@usps.gov, (202) 268-2944.

SUPPLEMENTARY INFORMATION: The Postal Service is amending 39 CFR part 265 to implement changes to the procedures for the disclosure of records and for engaging in dispute resolution under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as required by the FOIA Improvement Act of 2016 (FOIAIA), Pub. L. 114-185 (June 30, 2016), 130 Stat. 538. Under section 3 of the FOIA Improvement Act (130 Stat. 544)

agencies are required to make such changes not later than 180 days after its date of enactment.

The Postal Service has accordingly prepared a revision of 39 CFR part 265 to implement the amendments to the FOIA contained in section 2 of the FOIAIA. These amendments relate to such matters as the availability of certain records for public inspection in an electronic format; the assessment of fees related to voluminous record requests; modifications to the exemptions from disclosure for certain records described in 5 U.S.C. 552(b); and addressing the role of the Office of Government Information Services (OGIS).

In addition, the Postal Service is restructuring its FOIA response procedures, without substantive change to their underlying policy, with the objective of enhancing their usefulness and comprehensibility. In this regard, 39 CFR part 265 has been retitled and subdivided into three subparts, dealing separately with (1) the generally applicable procedures for the disclosure of records under FOIA; (2) special rules applicable to the disclosure of records in compliance with subpoenas and other court orders, in response to requests for records or testimony in other legal proceedings, or pursuant to requests directed to the Postal Inspection Service; and (3) the rules concerning the availability of specific categories of records that are not subject to mandatory disclosure in whole or in part.

As reorganized and amended, 39 CFR part 265 is structured as follows:

Subpart A – Procedures for Disclosure of Records Under the Freedom of Information Act

This subpart sets forth the procedural rules applicable to the submission and processing of FOIA requests, including how and to whom a request should be submitted, the responsibility for and the timing of a response, the nature and content of the response, the treatment of confidential commercial information obtained from a submitter outside the Postal Service that may be protected from disclosure, the procedure for making an administrative appeal of the Postal Service's response to a request, and the fees that may apply to processing a request. This subpart is designed to carry forward the substantive content of former §§ 265.1-265.5 and §§ 265.7-265.9 in a more accessible and useful format.

265.1 General provisions.

This section has been retitled and revised to present a concise and accessible overview of the policies and functions implemented by this subpart.

265.2 Proactive disclosure of Postal Service records.

This section has been retitled and revised to ensure the continued availability of those records that must be made publicly available, or are appropriate for public disclosure, and to provide for the posting and indexing of records in an electronic format as required under the FOIAIA.

265.3 Procedure for submitting a FOIA request.

This section has been retitled and revised to explain the organization and functions of the Postal Service's FOIA Requester Service Centers (RSCs), as well as the procedures to be followed in submitting a FOIA request.

265.4 Responsibility for responding to requests.

This section has been retitled and revised to clarify the functional responsibilities of the RSCs in responding to FOIA requests.

265.5 Timing of responses to requests.

This section has been retitled and revised to set out the timeframe applicable to the processing of requests, including special provisions for the multitrack processing of simple or complex requests, expedited processing where appropriate, the extension of time in unusual circumstances, and aggregation of requests.

265.6 Responses to requests.

This section has been retitled and revised to specify the procedures for grants of requests, adverse determinations of requests, denials of requests, and any redaction of documents released.

265.7 Confidential commercial information obtained from submitters.

This section, the successor to former § 265.8, has been retitled and revised to specify the procedures for processing requests for information that may be protected from disclosure under FOIA Exemption 4 (5 U.S.C. 552(b)(4)) because it contains confidential commercial or financial information obtained by the Postal Service from a submitter outside the Postal Service.

265.8 Administrative appeals.

This section has been retitled and revised to set forth the requirements for making an appeal of a FOIA decision, and the process for its adjudication.

265.9 Fees.

This section has been retitled and revised to specify the fee structure for processing FOIA requests, including special provisions concerning requests from

educational institutions, noncommercial scientific institutions, and representatives of the news media.

Subpart B—Production or Disclosure in Federal and State Proceedings

This subpart retains current §§ 265.11-265.13 with no substantive change.

Where necessary, cross-references to other postal regulations have been updated.

265.11 Compliance with subpoenas duces tecum, court orders, and summonses.

No substantive changes have been made in this section.

265.12 Demands for testimony or records in certain legal proceedings.

No substantive changes have been made in this section.

265.13 Compliance with subpoenas, summonses, and court orders by postal employees within the Postal Inspection Service where the Postal Service, the United States, or any other federal agency is not a party.

No substantive changes have been made in this section.

Subpart C – Availability of Records

The provisions of former § 265.6 have been redesignated as § 265.14, and relocated to a separate subpart. This action is intended to enhance the usefulness of these regulations, and add clarity to the distinction between those records that are available to the public on request, and those records that are not subject to mandatory public disclosure, or available only with certain restrictions.

265.14 Rules Concerning Specific Categories of Records.

This section retitles, relocates, and revises for clarity the rules concerning records that are not subject to mandatory public disclosure, as well as those that are available with certain restrictions, including records compiled for law enforcement

purposes, the names and addresses of postal customers, and records the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

List of Subjects in 39 CFR Part 265

Administrative practice and procedure, Courts, Freedom of Information, Government employees.

For the reasons stated in the preamble, the Postal Service amends 39 CFR chapter I by revising part 265 to read as follows:

PART 265 – PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

Subpart A -- Procedures for Disclosure of Records Under the Freedom of Information Act

Sec.

- 265.1 General provisions.
- 265.2 Proactive disclosure of Postal Service records.
- 265.3 Procedure for submitting a FOIA request.
- 265.4 Responsibility for responding to requests.
- 265.5 Timing of responses to requests.
- 265.6 Responses to requests.
- 265.7 Confidential commercial information obtained from submitters.
- 265.8 Administrative appeals.
- 265.9 Fees.

Subpart B—Production or Disclosure in Federal and State Proceedings

- 265.11 Compliance with subpoenas *duces tecum*, court orders, and summonses.
- 265.12 Demands for testimony or records in certain legal proceedings.
- 265.13 Compliance with subpoenas, summonses, and court orders by postal employees within the Postal Inspection Service where the Postal Service, the United States, or any other Federal agency is not a party.

Subpart C – Availability of Records

- 265.14 Rules concerning specific categories of records.

AUTHORITY: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601; Pub. L. 114-185.

§ 265.1 General provisions.

(a) This subpart contains the regulations that implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, insofar as the Act applies to the Postal Service.

These rules should be read in conjunction with the text of the FOIA and the *Uniform Freedom of Information Fee Schedule and Guidelines* published by the Office of Management and Budget, (OMB Guidelines), 52 FR 10012 (Mar. 27, 1987). The *Postal Service FOIA Requester's Guide*, an easy-to-read guide for making Postal Service FOIA requests, is available at <http://about.usps.com/who-we-are/foia/welcome.htm>.

(b) Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed under Part 266 as well as under this subpart.

(c) It is the policy of the Postal Service to make its official records available to the public to the maximum extent consistent with the public interest. This policy requires a practice of full disclosure of those records that are covered by the requirements of the FOIA, subject only to the specific exemptions required or authorized by law. The exemptions from mandatory disclosure for various types of records provided by 5 U.S.C. 552(b) and 39 U.S.C. 410(c) reflect the fact that under some circumstances, the public interest may be better served by leaving the disclosure of particular records to the discretion of the Postal Service rather than by requiring their disclosure. This Postal Service policy does not create any right enforceable in court.

(d) As referenced in this subpart, *component* means any department or facility within the Postal Service that maintains records; the Office of Inspector General; and the Postal Inspection Service. *Postal Service* refers to all such components collectively.

(e) Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

§ 265.2 Proactive disclosure of Postal Service records.

(a) *In general.* The Postal Service is responsible for determining which of its records must be made publicly available, for identifying additional records of interest to the public that are appropriate for public disclosure, and for posting and indexing such records. The Postal Service's FOIA Requester Service Centers (RSCs) and FOIA Public Liaisons can assist individuals in locating Postal Service records. Descriptions of, and contact information for, the various FOIA RSCs can be found at <http://about.usps.com/who-we-are/foia/welcome.htm>.

(b) *Records available in an electronic format.* Records that the FOIA requires the Postal Service to make available for public inspection in an electronic format pursuant to 5 U.S.C. 552(a)(2) and that are exempt from the requirements of 5 U.S.C. 552(a)(3), may be accessed through the Postal Service's website at <http://about.usps.com/who-we-are/foia/welcome.htm>. The Postal Service must ensure that its website of posted records and indices is reviewed and updated on an ongoing basis. Such records available for public inspection in an electronic format include the following:

(1) *Opinions.* All final opinions and orders made in the adjudication of cases by the Judicial Officer and Administrative Law Judges, all final determinations pursuant to section 404(b) of title 39, United States Code, to close or consolidate a post office, or to disapprove a proposed closing or consolidation, all advisory opinions concerning the private express statutes issued pursuant to 39 CFR 310.6, and all supplier disagreement decisions are on file and available for inspection and copying at the

Headquarters Library and, if created on or after November 1, 1996, also at the Postal Service's website at <http://about.usps.com/who-we-are/foia/welcome.htm>.

(2) *Administrative manuals and instructions.* The manuals, instructions, and other publications of the Postal Service that affect members of the public are available through the Headquarters Library and at many post offices and other postal facilities. Those which are available to the public but are not listed for sale may be inspected in the Headquarters Library, at any postal facility which maintains a copy, or, if created on or after November 1, 1996, through the Postal Service's website at <http://about.usps.com/who-we-are/foia/welcome.htm>. Copies of publications which are not listed as for sale or as available free of charge may be requested on an individual basis in accordance with the procedures provided in § 265.3.

(3) *Previously released records.* Copies of all records, regardless of form or format, that have been released to any person pursuant to the FOIA; and that because of the nature of their subject matter, the Postal Service determines have become or are likely to become the subject of subsequent requests for substantially the same records; or that have been requested 3 or more times, as well as a general index of such records. Records processed and disclosed after March 31, 1997, are available for inspection and copying at the Headquarters Library. Any such records created by the Postal Service on or after November 1, 1996, also will be available at the Postal Service's website identified at § 265.2(b). Records described in this paragraph that were not created by, or on behalf of, the Postal Service generally will not be available at the website. Records will be available in the form in which they were originally disclosed, except to the extent that they contain information that is not appropriate for public

disclosure and may be withheld pursuant to this section. Any deleted material will be marked and the applicable exemptions indicated in accordance with § 265.6(d).

(4) *Public index.* (i) A public index is maintained in the Headquarters Library and at the website of all final opinions and orders made by the Postal Service in the adjudication of cases, Postal Service policy statements which may be relied on as precedents in the disposition of cases, administrative staff manuals and instructions that affect the public, and other materials which the Postal Service elects to index and make available to the public on request in the manner set forth in paragraph (b) of this section.

(ii) The index contains references to matters issued after July 4, 1967, and may reference matters issued prior to that date.

(iii) Any person may arrange for the inspection of any matter in the public index in accordance with the procedures of § 265.3.

(iv) Copies of the public index and of matters listed in the public index may be requested through the procedures described in § 265.3, with payment of any applicable fees.

(v) Materials listed in the public index that were created on or after November 1, 1996, will also be available in electronic format at the Postal Service's website at <http://about.usps.com/who-we-are/foia/welcome.htm>.

§ 265.3 Procedure for submitting a FOIA request.

(a) *To whom submitted.* A request must be submitted to the appropriate FOIA Requester Service Center (RSC). Descriptions of, and contact information for, the various FOIA RSCs can be found at <http://about.usps.com/who-we-are/foia/welcome.htm>. For assistance in determining the appropriate FOIA RSC,

requesters may contact the USPS HQ FOIA Requester Service Center, Privacy and Records Office, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260, telephone (202) 268-2608. Requests for listings of postal employee names should also be sent to the USPS HQ FOIA Requester Service Center.

(b) *Form of request.* A request to inspect or to obtain a copy of an identifiable Postal Service record must be in writing and bear the caption "Freedom of Information Act Request" or otherwise be clearly and prominently identified as a request for records pursuant to the Freedom of Information Act, both on the letter and on the envelope or other cover. Requests for records that are labeled incorrectly may be delayed in reaching the appropriate FOIA RSC. A requester must provide his or her full name and mailing address. A requester may also provide a daytime telephone number or email address to facilitate communication regarding his or her request.

(c) *Content of request.* Requesters must describe the records sought in sufficient detail to enable Postal Service personnel to locate them with a reasonable amount of effort. Whenever possible, requesters should include specific information about each record sought, such as the type of record (e.g., contract, report, memorandum, etc.); the title or case number of a specific document or report; the topic or subject matter; the name of the office, facility, functional unit or employees most likely to possess the record; the geographical location, such as a city and state, where the records are thought to exist; the date or general timeframe of the record's creation; and any details related to the purpose of the record. Requests for email records should specify the likely senders and recipients, keywords, and a range of dates. If seeking information about a company, requesters should provide the exact name and address of the company

(many companies use similar names). Before submitting requests, requesters may contact the relevant Postal Service FOIA Requester Service Center to discuss the records they are seeking and to receive assistance in describing the records. The request may state the maximum amount of fees for which the requester is willing to accept liability without prior notice. If no amount is stated, the requester will be deemed willing to accept liability for fees not to exceed \$25.00. See paragraph (e)(2) of § 265.9. The request may also specify the preferred form or format (including electronic formats) of the requested records.

(d) *First-party requests.* A requester who is making a request for records about himself must provide verification of identity sufficient to satisfy the component as to his identity prior to release of the record. For Privacy Act-protected records, the requester must further comply with the procedures set forth in 39 CFR 266.6.

(e) *Third-party requests.* Where a FOIA request seeks disclosure of records that pertain to a third party, a requester may receive greater access by submitting a written authorization signed by that individual authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased (e.g., a copy of a death certificate or an obituary). As an exercise of administrative discretion, each component can require a requester to supply a notarized authorization, a declaration, or other additional information if necessary in order to verify that a particular individual has consented to disclosure.

(f) *Improper requests.* A request that does not reasonably describe the records sought, or does not comply with the published rules regarding the procedures to be followed for submitting a request, will be deemed to be an improper FOIA request. If

after receiving a request, the Postal Service determines that it is improper, the Postal Service will inform the requester as to why the request is improper. If the requester fails to respond to the Postal Service's request for clarification or additional information within 30 calendar days, the Postal Service will assume the requester is no longer interested in pursuing the request and close its file. The FOIA Requester Service Centers and the FOIA Public Liaisons are available to assist requesters in correcting a request that does not reasonably describe the records sought.

§ 265.4 Responsibility for responding to requests.

(a) *In general.* When a request is received, the FOIA RSC will either respond to the request, or refer the request to the appropriate FOIA RSC or records custodians. The FOIA RSC will advise the requester of any such referral. The Postal Service, the Office of Inspector General of the Postal Service, and the Postal Inspection Service, respectively, are responsible for responding to requests they receive for records they maintain. Records responsive to a request ordinarily will include only records in the Postal Service's possession as of the date of the search. If any other date is used, the Postal Service shall inform the requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c) or 39 U.S.C. 410(c) is not considered responsive to the request.

(b) *Authority to grant or deny requests.* The records custodian of the requested record, or his designee, is authorized to grant or to deny the request. FOIA RSC staff may also grant or deny requests.

(c) *Receipt and tracking of requests.* FOIA RSCs are responsible for the initial receipt and tracking of FOIA requests.

(d) *Acknowledgments of requests.* FOIA RSCs must acknowledge the request in writing and assign it an individualized tracking number if it will take longer than 10 working days to process. The acknowledgement of the request must include a brief description of the records sought to allow requesters to more easily keep track of their requests.

§ 265.5 Timing of responses to requests.

(a) *In general.* Requests will ordinarily be responded to according to their order of receipt. A request that is not initially submitted to the appropriate FOIA RSC will be deemed to have been received by the Postal Service at the time that it is actually received by the appropriate FOIA RSC or at the time the request is referred to the appropriate records custodian by a FOIA RSC, but in any case a request will be deemed to have been received no later than 10 business days after the request is first received by a FOIA RSC.

(b) *Multitrack processing.* (1) Unless expedited processing has been granted, the Postal Service places each request in simple or complex tracks based on the amount of work and time involved in processing the request. Factors considered in assigning a request into the complex track may include one or more of the following factors:

- (i) The request involves voluminous documents;
- (ii) The complexity of the material;
- (iii) The request involves record searches at multiple facilities or locations;
- (iv) The request requires consultation among components or other agencies;
- (v) The number of open requests submitted by the same requester.

(2) Within each track, the Postal Service processes requests in the order in which they are received. When appropriate, the FOIA RSC or the component will notify the requester if it has placed the request in the "Complex" track, and provide the requester with an opportunity to limit the scope of the request. If the requester limits the scope of the request, it may result in faster processing.

(c) *Expedited processing.* (1) Requests and appeals shall be processed on an expedited basis whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information.

(2) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, under paragraph (e)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester's sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an "urgency to

inform” the public on the topic. As a matter of administrative discretion, a component may waive the formal certification requirement.

(3) A component shall notify the requester within 10 calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request shall be given priority, placed in the processing track for expedited requests, and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously

(d) *Unusual circumstances.* Whenever the statutory time limit for processing a request cannot be met because of “unusual circumstances”, as defined in the FOIA, and the component extends the time limit on that basis, the component shall, before the expiration of the 20-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request can be expected to be completed. Where the extension exceeds 10 working days, the component shall, as described by the FOIA, provide the requester with an opportunity to modify the request or arrange an alternative time period for processing and alert the requester to the availability of the Office of Government Information Services to provide dispute resolution services. The component shall make available its designated FOIA contact and its FOIA Public Liaison for this purpose.

(e) *Aggregating requests.* For the purposes of satisfying unusual circumstances under the FOIA, the Postal Service may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a single requester or by a group of requesters acting in concert, constitute a single request that would otherwise

involve unusual circumstances. Multiple requests that involve unrelated matters shall not be aggregated.

§ 265.6 Responses to requests.

(a) *Grants of requests.* Once a component makes a determination to grant a request in whole or in part, it shall notify the requester in writing and include a statement alerting the requester of his or her right to seek assistance from the FOIA Public Liaison. The component also shall inform the requester of any fees charged under § 265.9 and shall disclose the requested records to the requester promptly upon payment of any applicable fees.

(b) *Adverse determinations of requests.* A component making an adverse determination denying a request in any respect shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that: the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(c) *Content of denial.* The denial shall include, to the extent applicable:

- (1) The name and title or position of the person responsible for the denial;
- (2) A brief statement of the reasons for the denial, including any FOIA exemption applied by the component in denying the request;

(3) An estimate of the volume of any records or information withheld, such as the number of pages or some other reasonable form of estimation, although such an estimate is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable exemption; and

(4) A statement that the denial may be appealed under § 265.8, and a description of the requirements set forth therein.

(5) A statement notifying the requester of his or her right to seek dispute resolution services from the FOIA Public Liaison or the Office of Government Information Services.

(d) *Markings on released documents.* Markings on released documents must be clearly visible to the requester. Records disclosed in part shall be marked to show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted shall also be indicated on the record, if technically feasible.

(e) *Use of record exclusions.* (1) In the event that a component identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), the component must confer with Department of Justice, Office of Information Policy (OIP), to obtain approval to apply the exclusion.

§ 265.7 Confidential commercial information obtained from submitters.

(a) *Definitions.* (1) *Confidential commercial information* means commercial or financial information obtained by the Postal Service from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *Submitter* means any person or entity, including a corporation, State, or foreign government, but not including another Federal Government entity, that provides information, either directly or indirectly to the Postal Service.

(b) *Designation of confidential commercial information.* A submitter of confidential commercial information must use good faith efforts to designate by appropriate markings, either at the time of submission or within a reasonable time thereafter, any portion of its submission that it considers to be protected from disclosure under Exemption 4. The Postal Service will not determine the validity of any request for confidential treatment until a request for disclosure of the information is received. These designations shall expire 10 years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(c) *When notice to submitters is required.* (1) The Postal Service shall promptly provide written notice to a submitter of confidential commercial information whenever records containing such information are requested under the FOIA if, after reviewing the request, the responsive records, and any appeal by the requester, the Postal Service determines that it may be required to disclose the records, provided:

(i) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(ii) The Postal Service has a reason to believe that the requested information may be protected from disclosure under Exemption 4, but has not yet determined

whether the information is protected from disclosure under that exemption or any other applicable exemption.

(2) The notice shall either describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, notice may be made by posting or publishing the notice in a place or manner reasonably likely to accomplish it.

(d) *Exceptions to submitter notice requirements.* The notice requirements of this section shall not apply if:

(1) The Postal Service determines that the information is exempt under the FOIA or 39 U.S.C. 410(c);

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by a statute other than the FOIA or by a Postal Service regulation; if disclosure is required by a Postal Service regulation and the submitter provided written justification for protection of the information under Exemption 4 at the time of submission or a reasonable time thereafter, advanced written notice of the disclosure must be provided to the submitter; or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous or overly broad, except that, in such cases, the component shall give the submitter written notice of any final decision to disclose the information and must provide that notice within a reasonable number of days prior to a specified disclosure date.

(e) *Opportunity to object to disclosure.* (1) The Postal Service shall specify a reasonable time period within which the submitter must respond to the notice referenced above. If a submitter has any objections to disclosure, it should provide the Postal Service a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for nondisclosure, the submitter must explain why the information constitutes a trade secret or commercial or financial information that is privileged or confidential. Whenever possible, the submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the submitter that the information in question is in fact confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources.

(2) A submitter who fails to respond within the time period specified in the notice shall be considered to have no objection to disclosure of the information. Information received by the Postal Service after the date of any disclosure decision shall not be considered by the Postal Service. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA. The Postal Service must consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(f) *Determination that confidential treatment is warranted.* If the Postal Service determines that confidential treatment is warranted for any part of the requested records and that the records will therefore be redacted or withheld, it must inform the requester in writing, and must advise the requester of the right to appeal. A copy of the letter of

denial must also be provided to the submitter of the records in any case in which the submitter had been notified of the request.

(g) *Notice of intent to disclose.* If the Postal Service decides to disclose information over the objection of a submitter, the Postal Service shall provide the submitter written notice, which shall include:

(1) A statement of the reasons why each of the submitter's disclosure objections was not sustained;

(2) A description or copy of the information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the component shall promptly notify the submitter. Whenever a submitter files a lawsuit to prevent disclosure of confidential commercial information, the component shall promptly notify the requester.

(i) *Requester notification.* The Postal Service shall notify a requester whenever it notifies the submitter of its intent to disclose the requested information.

§ 265.8 Administrative appeals.

(a) *Requirements for making an appeal.* Requesters may appeal adverse decisions rendered by the Postal Inspection Service or any Postal Service component by mail to the General Counsel, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260; or by email to foiaappeal@usps.gov. The requester must make the appeal in writing and to be considered timely it must be postmarked, or in the case

of electronic submissions, transmitted, within 90 calendar days after the date of the response; or within a reasonable time if the appeal is from a failure of the custodian to act. The General Counsel may, in his or her discretion, consider late appeals. In the event of the denial of a request or of other action or failure to act on the part of a custodian from which no appeal is taken, the General Counsel may, if he or she considers that there is doubt as to the correctness of the custodian's action or failure to act, review the action or failure to act as though an appeal pursuant to this section had been taken. A letter of appeal should include, as applicable:

(1) A copy of the request, of any notification of denial or other action, and of any other related correspondence;

(2) The FOIA tracking number assigned to the request;

(3) A statement of the action, or failure to act, from which the appeal is taken;

(4) A statement identifying the specific redactions to responsive records that the requester is challenging;

(5) A statement of the relief sought; and

(6) A statement of the reasons why the requester believes the action or failure to act is erroneous.

(b) *Adjudication of appeals.* (1) The decision of the General Counsel or his or her designee constitutes the final decision of the Postal Service on the issue being appealed. The General Counsel will give prompt consideration to an appeal for expedited processing of a request. All other decisions normally will be made within 20 working days from the time of the receipt by the General Counsel. The 20-day response period may be extended by the General Counsel, or his or her designee, for a period

not to exceed an additional 10 working days when reasonably necessary to permit the proper consideration of an appeal, under one or more of the unusual circumstances set forth in paragraph (a)(5) of this section. The aggregate number of additional working days utilized, however, may not exceed 10 working days.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(3) On receipt of any appeal, the General Counsel, or his or her designee, must take appropriate action to ensure compliance with applicable classification rules.

(c) *Decisions on appeals.* A decision on an appeal must be made in writing. A decision that upholds a component's determination in whole or in part will contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision will provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the mediation services offered by the Office of Government Information Services of the National Archives and Records Administration as a non-exclusive alternative to litigation. If a custodian's decision is remanded or modified on appeal, the requester will be notified of that determination in writing. The component will further process the request in accordance with that appeal determination and respond directly to the requester. If not prohibited by or under law, the General Counsel, or his designee may direct the disclosure of a record even though its disclosure is not required by law or regulation.

(d) *When appeal is required.* Before seeking judicial review of a component's adverse determination, a requester generally must first submit a timely administrative appeal.

(e) *Appeal procedures for the Office of the Inspector General.* The appeal procedures for the Office of the Inspector General are described in 39 CFR 230.5.

§ 265.9 Fees.

(a) *In general.* The Postal Service shall charge for processing requests under the FOIA in accordance with the provisions of this section and with the OMB Guidelines. In order to resolve any fee issues that arise under this section, a component may contact a requester for additional information. The Postal Service will conduct searches, review, and duplication in the most efficient and the least expensive manner. The Postal Service ordinarily will collect all applicable fees before sending copies of records to a requester. Requesters must pay fees by check or money order made payable to “U.S. Postal Service.”

(b) *Definitions.* For purposes of this section:

(1) *Commercial-use requester* is a requester who asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. The Postal Service’s decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester’s intended use of the information.

(2) *Direct costs* are those expenses that the Postal Service incurs in searching for and duplicating records in order to respond to a FOIA request. In the case of commercial-use requesters, direct costs include reviewing and taking all other measures needed to prepare the records for disclosure.

(3) *Search* is the process of looking for and retrieving records or information responsive to a request. Search time includes page-by-page or line-by-line identification

of information within records and the reasonable efforts expended to locate and retrieve information from electronic records.

(4) *Duplication* is reproducing a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

(5) *Review* is the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under § 265.6, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(6) *Educational institution* is any school that operates a program of scholarly research. A requester in this fee category must show that the request is authorized by, and is made under the auspices of, an educational institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research. To fall within this fee category, the request must serve the scholarly research goals of the institution rather than an individual research goal.

(7) *Noncommercial scientific institution* is an institution that is not operated on a “commercial” basis, as defined in paragraph (b)(1) of this section and that is operated solely for the purpose of conducting scientific research the results of which are not

intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not for a commercial use.

(8) *Representative of the news media* is any person or entity organized and operated to publish or broadcast news to the public that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast “news” to the public at large and publishers of periodicals that disseminate “news” and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the Internet. A request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use. “Freelance” journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, the Postal Service shall also consider a requester's past publication record in making this determination.

(c) *Charging fees.* In responding to FOIA requests, the Postal Service shall charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section. Because the fee amounts provided below already account

for the direct costs associated with a given fee type, components should not add any additional costs to charges calculated under this section.

(1) *Search.* (i) Requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media are not subject to search fees. Search fees shall be charged for all other requesters, subject to the restrictions of paragraph (d) of this section. The Postal Service may charge for time spent searching even if no responsive records are located or if it determines that the records are entirely exempt from disclosure.

(ii) For each half hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fee shall be \$21.00.

(iii) Requesters shall be charged the direct costs associated with conducting any search that requires the creation of a new computer program to locate the requested records. Requesters shall be notified of the costs associated with creating such a program and must agree to pay the associated costs before the costs may be incurred.

(iv) For requests that require the retrieval of records stored at a Federal records center operated by the National Archives and Records Administration (NARA), or other storage facility, additional costs may be charged for their retrieval.

(2) *Duplication.* Duplication fees shall be charged to all requesters, subject to the restrictions of paragraph (d) of this section. A component shall honor a requester's preference for receiving a record in a particular form or format where it is readily reproducible by the component in the form or format requested. Where photocopies are supplied, the component shall provide one copy per request at a cost of five cents per

page. For copies of records produced on tapes, disks, or other media, components shall charge the direct costs of producing the copy, including operator time. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials. For other forms of duplication, components shall charge the direct costs.

(3) *Review.* Commercial-use requesters shall be charged review fees. Review fees shall be assessed in connection with the initial review of the record, *i.e.*, the review conducted by a component to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, if a particular exemption is deemed to no longer apply, any costs associated with a component's re-review of the records in order to consider the use of other exemptions may be assessed as review fees. Review fees shall be charged at the same rates as those charged for a search under paragraph (c)(1)(ii) of this section.

(d) *Restrictions on charging fees.* (1) No search fees will be charged for requests by educational institutions (unless the records are sought for a commercial use), noncommercial scientific institutions, or representatives of the news media.

(2)(i) If a component fails to comply with the time limits in which to respond to a request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (d)(1) of this section, may not charge duplication fees.

(ii) If a component has determined that unusual circumstances as defined by the FOIA apply and the component provided timely written notice to the requester in

accordance with the FOIA, the component has an additional 10 days to respond to the request.

(iii) If a component has determined that unusual circumstances as defined by the FOIA apply and more than 5,000 pages are necessary to respond to the request, the component may charge search fees, or, in the case of requesters described in paragraph (d)(1) of this section, may charge duplication fees if the following steps are taken:

(A) The component provides timely written notice of unusual circumstances to the requester; and

(B) The component discussed or made three good faith attempts to discuss via mail, email, or telephone how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii).

(iv) If a court has determined that exceptional circumstances exist, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(3) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(4) Except for requesters seeking records for a commercial use, components shall provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent for other media); and

(ii) The first two hours of search.

(5) When, after first deducting the 100 free pages (or its cost equivalent) and the first two hours of search, a total fee calculated under paragraph (c) of this section is \$25.00 or less for any request, no fee will be charged.

(e) *Notice of anticipated fees in excess of \$25.00.* (1) When a component determines or estimates that the fees to be assessed in accordance with this section will exceed \$25.00, the component shall notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the component shall advise the requester accordingly. If the requester is a noncommercial use requester, the notice shall specify that the requester is entitled to the statutory entitlements of 100 pages of duplication at no charge and, if the requester is charged search fees, two hours of search time at no charge, and shall advise the requester whether those entitlements have been provided.

(2) In cases in which a requester has been notified that the actual or estimated fees are in excess of \$25.00, the request shall not be considered received and further work will not be completed until the requester agrees in writing to pay the actual or estimated total fee, or designates some amount of fees the requester is willing to pay, or in the case of a noncommercial use requester who has not yet been provided with the requester's statutory entitlements, designates that the requester seeks only that which can be provided by the statutory entitlements. Components are not required to accept payments in installments.

(3) If the requester has indicated a willingness to pay some designated amount of fees, but the component estimates that the total fee will exceed that amount, the component shall toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The component shall inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(4) Components shall make available their FOIA Public Liaison or other FOIA contact to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Although not required to provide special services, if a component chooses to do so as a matter of administrative discretion, the direct costs of providing the service requested by the requester shall be charged. Examples of such services include providing multiple copies of the same document, or sending records by means other than first class mail.

(g) *Aggregating requests.* In instances where the Postal Service reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, or that a requester or group of requesters acting in concert makes multiple requests for the same records maintained at multiple facilities or components, the Postal Service may aggregate those requests and charge accordingly. Multiple FOIA requests by a single requester related to the same issue will be aggregated for the purpose of assessing fees. Multiple requests involving unrelated matters shall not be aggregated.

(h) *Advance payments.* (1) For requests other than those described in paragraphs (h)(2) or (3) of this section, a component shall not require the requester to submit an advance payment before work is commenced or continued on a request. Payment owed for work already completed (*i.e.*, payment before copies are sent to a requester) is not an advance payment.

(2) When a component determines or estimates that a total fee to be charged under this section will exceed \$250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. A component may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee within 30 calendar days of the billing date, a component may require that the requester pay the full amount due on that prior request, and the component may require that the requester make an advance payment of the full amount of any anticipated fee before the component begins to process a new request or continues to process a pending request or any pending appeal. Where a component has a reasonable basis to believe that a requester has misrepresented the requester's identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(4) In cases in which a component requires advance payment, the request shall not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 30

calendar days after the date of the component's fee determination, the request will be administratively closed.

(i) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires the Postal Service to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the component shall inform the requester of the contact information for that program.

(j) *Requirements for waiver or reduction of fees.* (1) Records responsive to a request shall be furnished without charge or at a reduced rate below the rate established under paragraph (c) of this section, where a component determines, based on all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Postal Service, and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) In deciding whether disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the Postal Service, components shall consider all four of the following factors:

(i) The subject of the request must concern identifiable operations or activities of the Postal Service, with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested records must be meaningfully informative about government operations or activities in order to be “likely to contribute” to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not contribute to such understanding where nothing new would be added to the public's understanding.

(iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public shall be considered. A representative of the news media does not automatically satisfy this consideration.

(iv) The public's understanding of the subject in question must be enhanced by the disclosure to a significant extent.

(3) To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, components shall consider the following factors:

(i) Components shall identify any commercial interest of the requester, as defined in paragraph (b)(1) of this section, that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(ii) Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(5) Requests for a waiver or reduction of fees should be made when the request is first submitted to the component and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester shall be required to pay any costs incurred up to the date the fee waiver request was received.

Subpart B—Production or Disclosure in Federal and State Proceedings

§ 265.11 Compliance with subpoena *duces tecum*, court orders, and summonses.

(a) *Compliance with subpoena duces tecum.* (1) Except as required by Part 262, produce other records of the Postal Service only in compliance with a subpoena duces tecum or appropriate court order.

(2) Time, leave, and payroll records of postal employees are subject to production when a subpoena duces tecum or appropriate court order has been properly served. The custodian of the records may designate a postal employee to present the records. The presentation by a designee rather than the employee named in the subpoena or court order must meet with the approval of the attorneys for each side. In addition, such records may be released if authorized in writing by the employee.

(3) If the subpoena involves a job-connected injury, the records are under the exclusive jurisdiction of the Office of Workers' Compensation Programs, Department of Labor. Requests for authorization to produce these records shall be addressed to: Office of Workers' Compensation Programs, U.S. Department of Labor, Washington, DC 20210-0001. Also notify the attorney responsible for the issuance of the subpoena or court order.

(4) Employee medical records are primarily under the exclusive jurisdiction of the U.S. Civil Service Commission. The Commission has delegated authority to the Postal Service and to the Commission's Regional Directors to release medical information, in response to proper requests and upon competent medical advice, in accordance with the following criteria:

(i) Except in response to a subpoena or court order, do not release any medical information about an employee to any non-Federal entity or individual without authorization from the employee.

(ii) With authorization from the employee, the Area, Information Systems Service Center, or Chief Field Counsel will respond as follows to a request from a non-Federal source for medical information:

(A) If, in the opinion of a Federal medical officer, the medical information indicates the existence of a malignancy, a mental condition, or other condition about which a prudent physician would hesitate to inform a person suffering from such a condition as to its exact nature and probable outcome, do not release the medical information to the employee or to any individual designated by him, except to a physician, designated by the employee in writing. If a subpoena or court order was

issued, the responding official shall caution the moving party as to the possible dangers involved if the medical information is divulged.

(B) If, in the opinion of a Federal medical officer, the medical information does not indicate the presence of any condition which would cause a prudent physician to hesitate to inform a person of the exact nature and probable outcome of his condition, release it in response to a subpoena or court order, or to the employee or to any person, firm, or organization he authorizes in writing.

(C) If a Federal medical officer is not available, refer the request to the Civil Service Commission regional office with the medical certificates or other medical reports concerned.

(5) Do not release any records containing information as to the employee's security or loyalty.

(6) Honor subpoenas or court orders only when disclosure is authorized.

(7) When authorized to comply with a subpoena duces tecum, do not leave the original records with the court.

(b) [Reserved]

§ 265.12 Demands for testimony or records in certain legal proceedings.

(a) *Scope and applicability of this section.* (1) This section establishes procedures to be followed if the Postal Service or any Postal Service employee receives a demand for testimony concerning or disclosure of:

(i) Records contained in the files of the Postal Service;

(ii) Information relating to records contained in the files of the Postal Service; or

(iii) Information or records acquired or produced by the employee in the course of his or her official duties or because of the employee's official status.

(2) This section does not create any right or benefit, substantive or procedural, enforceable by any person against the Postal Service.

(3) This section does not apply to any of the following:

(i) Any legal proceeding in which the United States is a party;

(ii) A demand for testimony or records made by either House of Congress or, to the extent of matter within its jurisdiction, any committee or subcommittee of Congress;

(iii) An appearance by an employee in his or her private capacity in a legal proceeding in which the employee's testimony does not relate to the employee's official duties or the functions of the Postal Service; or

(iv) A demand for testimony or records submitted to the Postal Inspection Service (a demand for Inspection Service records or testimony will be handled in accordance with rules in § 265.13).

(4) This section does not exempt a request from applicable confidentiality requirements, including the requirements of the Privacy Act, 5 U.S.C. 552a.

(b) *Definitions.* The following definitions apply to this section:

(1) *Adjudicative authority* includes, but is not limited to, the following:

(i) A court of law or other judicial forums, whether local, state, or federal; and

(ii) Mediation, arbitration, or other forums for dispute resolution.

(2) *Demand* includes a subpoena, subpoena duces tecum, request, order, or other notice for testimony or records arising in a legal proceeding.

(3) *Employee* means a current employee or official of the Postal Service.

(4) *General Counsel* means the General Counsel of the United States Postal Service, the Chief Field Counsels, or an employee of the Postal Service acting for the General Counsel under a delegation of authority.

(5) *Legal proceeding* means:

(i) A proceeding before an adjudicative authority;

(ii) A legislative proceeding, except for a proceeding before either House of Congress or before any committee or subcommittee of Congress; or

(iii) An administrative proceeding.

(6) *Private litigation* means a legal proceeding to which the United States is not a party.

(7) *Records custodian* means the employee who maintains a requested record. For assistance in identifying the custodian of a specific record, contact the Manager, Records Office, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260, telephone (202) 268-2608.

(8) *Testimony* means statements made in connection with a legal proceeding, including but not limited to statements in court or other forums, depositions, declarations, affidavits, or responses to interrogatories.

(9) *United States* means the federal government of the United States and any of its agencies, establishments, or instrumentalities, including the United States Postal Service.

(c) *Requirements for submitting a demand for testimony or records.* (1)
Ordinarily, a party seeking to obtain records from the Postal Service should submit a request in accordance with the provisions of the Freedom of Information Act (FOIA), 5

U.S.C. 552, and the Postal Service's regulations implementing the FOIA at 39 CFR 265.1 through 265.9, 265.14; or the Privacy Act, 5 U.S.C. 552a and the Postal Service's regulations implementing the Privacy Act at 39 CFR 266.1 through 266.10.

(2) A demand for testimony or records issued pursuant to the rules governing the legal proceeding in which the demand arises must:

(i) Be in writing;

(ii) Identify the requested record and/or state the nature of the requested testimony, describe the relevance of the record or testimony to the proceeding, and why the information sought is unavailable by any other means; and

(iii) If testimony is requested, contain a summary of the requested testimony and a showing that no document could be provided and used in lieu of testimony.

(3) Procedures for service of demand are made as follows:

(i) Service of a demand for testimony or records (including, but not limited to, personnel or payroll information) relating to a current or former employee must be made in accordance with the applicable rules of civil procedure on the employee whose testimony is requested or the records custodian. The requester also shall deliver a copy of the demand to the District Manager, Customer Services and Sales, for all current employees whose work location is within the geographic boundaries of the manager's district, and any former employee whose last position was within the geographic boundaries of the manager's district. A demand for testimony or records must be received by the employee whose testimony is requested and the appropriate District Manager, Customer Services and Sales, at least ten (10) working days before the date the testimony or records are needed.

(ii) Service of a demand for testimony or records other than those described in paragraph (c)(3)(i) of this section must be made in accordance with the applicable rules of civil procedure on the employee whose testimony is requested or the records custodian. The requester also shall deliver a copy of the demand to the General Counsel, United States Postal Service, 475 L'Enfant Plaza, SW, Washington DC 20260-1100, or the Chief Field Counsel. A demand for testimony or records must be received by the employee and the General Counsel or Chief Field Counsel at least ten (10) working days before the date testimony or records are needed.

(d) *Procedures followed in response to a demand for testimony or records.* (1) After an employee receives a demand for testimony or records, the employee shall immediately notify the General Counsel or Chief Field Counsel and request instructions.

(2) An employee may not give testimony or produce records without the prior authorization of the General Counsel.

(3)(i) The General Counsel may allow an employee to testify or produce records if the General Counsel determines that granting permission:

(A) Would be appropriate under the rules of procedure governing the matter in which the demand arises and other applicable laws, privileges, rules, authority, and regulations; and

(B) Would not be contrary to the interest of the United States. The interest of the United States includes, but is not limited to, furthering a public interest of the Postal Service and protecting the human and financial resources of the United States.

(ii) An employee's testimony shall be limited to the information set forth in the statement described at paragraph (c)(2) of this section or to such portions thereof as the

General Counsel determines are not subject to objection. An employee's testimony shall be limited to facts within the personal knowledge of the employee. A Postal Service employee authorized to give testimony under this rule is prohibited from giving expert or opinion testimony, answering hypothetical or speculative questions, or giving testimony with respect to privileged subject matter. The General Counsel may waive the prohibition of expert testimony under this paragraph only upon application and showing of exceptional circumstances and the request substantially meets the requirements of this section.

(4) The General Counsel may establish conditions under which the employee may testify. If the General Counsel authorizes the testimony of an employee, the party seeking testimony shall make arrangements for the taking of testimony by those methods that, in the General Counsel's view, will least disrupt the employee's official duties. For example, at the General Counsel's discretion, testimony may be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other means allowable by law.

(5) If a response to a demand for testimony or records is required before the General Counsel determines whether to allow an employee to testify, the employee or counsel for the employee shall do the following:

- (i) Inform the court or other authority of the regulations in this section; and
- (ii) Request that the demand be stayed pending the employee's receipt of the General Counsel's instructions.

(6) If the court or other authority declines the request for a stay, or rules that the employee must comply with the demand regardless of the General Counsel's

instructions, the employee or counsel for the employee shall respectfully decline to comply with the demand, citing *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), and the regulations in this section.

(7) The General Counsel may request the assistance of the Department of Justice or a U.S. Attorney where necessary to represent the interests of the Postal Service and the employee.

(8) At his or her discretion, the General Counsel may grant a waiver of any procedure described by this section, where waiver is considered necessary to promote a significant interest of the United States or for other good cause.

(9) If it otherwise is permissible, the records custodian may authenticate, upon the request of the party seeking disclosure, copies of the records. No employee of the Postal Service shall respond in strict compliance with the terms of a subpoena duces tecum unless specifically authorized by the General Counsel.

(e) *Postal Service employees as expert witnesses.* No Postal Service employee may testify as an expert or opinion witness, with regard to any matter arising out of the employee's official duties or the functions of the Postal Service, for any party other than the United States, except that in extraordinary circumstances, the General Counsel may approve such expert testimony in private litigation. A Postal Service employee may not testify as such an expert witness without the express authorization of the General Counsel. A litigant must obtain authorization of the General Counsel before designating a Postal Service employee as an expert witness.

(f) *Substitution of Postal Service employees.* Although a demand for testimony may be directed to a named Postal Service employee, the General Counsel, where

appropriate, may designate another Postal Service employee to give testimony. Upon request and for good cause shown (for example, when a particular Postal Service employee has direct knowledge of a material fact not known to the substitute employee designated by the Postal Service), the General Counsel may permit testimony by a named Postal Service employee.

(g) *Fees and costs.* (1) The Postal Service may charge fees, not to exceed actual costs, to private litigants seeking testimony or records by request or demand. The fees, which are to be calculated to reimburse fully the Postal Service for processing the demand and providing the witness or records, may include, among others:

(i) Costs of time spent by employees, including attorneys, of the Postal Service to process and respond to the demand;

(ii) Costs of attendance of the employee and agency attorney at any deposition, hearing, or trial;

(iii) Travel costs of the employee and agency attorney;

(iv) Costs of materials and equipment used to search for, process, and make available information.

(2) All costs for employee time shall be calculated on the hourly pay of the employee (including all pay, allowance, and benefits) and shall include the hourly fee for each hour, or portion of each hour, when the employee is in travel, in attendance at a deposition, hearing, or trial, or is processing or responding to a request or demand.

(3) At the discretion of the Postal Service, where appropriate, costs may be estimated and collected before testimony is given.

(h) *Acceptance of service.* This section does not in any way abrogate or modify the requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix) regarding service of process.

§ 265.13 Compliance with subpoenas, summonses, and court orders by postal employees within the Postal Inspection Service where the Postal Service, the United States, or any other Federal agency is not a party.

(a) *Applicability of this section.* The rules in this section apply to all federal, state, and local court proceedings, as well as administrative and legislative proceedings, other than:

- (1) Proceedings where the United States, the Postal Service, or any other Federal agency is a party;
- (2) Congressional requests or subpoenas for testimony or documents;
- (3) Consultative services and technical assistance rendered by the Inspection Service in executing its normal functions;
- (4) Employees serving as expert witnesses in connection with professional and consultative services under 5 CFR part 7001, provided that employees acting in this capacity must state for the record that their testimony reflects their personal opinions and should not be viewed as the official position of the Postal Service;
- (5) Employees making appearances in their private capacities in proceedings that do not relate to the Postal Service (e.g., cases arising from traffic accidents, domestic relations) and do not involve professional or consultative services; and

(6) When in the opinion of the Counsel or the Counsel's designee, Office of the Chief Postal Inspector, it has been determined that it is in the best interest of the Inspection Service or in the public interest.

(b) *Purpose and scope.* The provisions in this section limit the participation of postal employees within or assigned to the Inspection Service, in private litigation, and other proceedings in which the Postal Service, the United States, or any other federal agency is not a party. The rules are intended to promote the careful supervision of Inspection Service resources and to reduce the risk of inappropriate disclosures that might affect postal operations.

(c) *Definitions.* For the purposes of this section:

(1) *Authorizing official* is the person responsible for giving the authorization for release of documents or permission to testify.

(2) *Case or matter* means any civil proceeding before a court of law, administrative board, hearing officer, or other body conducting a judicial or administrative proceeding in which the United States, the Postal Service, or another federal agency is not a named party.

(3) *Demand* includes any request, order, or subpoena for testimony or the production of documents.

(4) *Document* means all records, papers, or official files, including, but not limited to, official letters, telegrams, memoranda, reports, studies, calendar and diary entries, graphs, notes, charts, tabulations, data analyses, statistical or information accumulations, records of meetings and conversations, film impressions, magnetic tapes, computer discs, and sound or mechanical reproductions;

(5) *Employee or Inspection Service employee*, for the purpose of this section only, refers to a Postal Service employee currently or formerly assigned to the Postal Inspection Service, student interns, contractors and employees of contractors who have access to Inspection Service information and records.

(6) *Inspection Service* means the organizational unit within the Postal Service that performs the functions specified in part 233 of this chapter.

(7) *Inspection Service Legal Counsel* is an attorney authorized by the Chief Postal Inspector to give legal advice to members of the Inspection Service.

(8) *Inspection Service Manual* is the directive containing the standard operating procedures for Postal Inspectors and certain Inspection Service employees.

(9) *Nonpublic* includes any material or information not subject to mandatory public disclosure under § 265.14(b).

(10) *Official case file* means official documents that relate to a particular case or investigation. These documents may be kept at any location and do not necessarily have to be in the same location in order to constitute the file.

(11) *Postal Inspector reports* include all written reports, letters, recordings, or other memorializations made in conjunction with the duties of a Postal Inspector.

(12) *Testify or testimony* includes both in-person oral statements before any body conducting a judicial or administrative proceeding and statements made in depositions, answers to interrogatories, declarations, affidavits, or other similar documents.

(13) *Third-party action* means an action, judicial or administrative, in which the United States, the Postal Service, or any other federal agency is not a named party.

(d) *Policy.* (1) No current or former employee within the Inspection Service may testify or produce documents concerning information acquired in the course of employment or as a result of his or her relationship with the Postal Service in any proceeding to which this section applies (see paragraph (a) of this section), unless authorized to do so. Authorization will be provided by:

(i) The Postal Inspector in Charge of the affected field Division, or designee, for Division personnel and records, after that official has determined through consultation with Inspection Service legal counsel that no legal objection, privilege, or exemption applies to such testimony or production of documents.

(ii) The Chief Postal Inspector or designee for Headquarters employees and records, after that official has determined through consultation with Inspection Service legal counsel, that no legal objection, privilege, or exemption applies to such testimony or production of documents.

(2) Consideration shall be given to:

(i) Statutory restrictions, as well as any legal objection, exemption, or privilege that may apply;

(ii) Relevant legal standards for disclosure of nonpublic information and documents;

(iii) Inspection Service rules and regulations and the public interest;

(iv) Conservation of employee time; and

(v) Prevention of the expenditure of Postal Service resources for private purposes.

(3) If additional information is necessary before a determination can be made, the authorizing official may, in coordination with Inspection Service legal counsel, request assistance from the Department of Justice.

(e) *Compliance with subpoena duces tecum.* (1) Except as required by part 262 of this chapter, produce any other record of the Postal Service only in compliance with a subpoena *duces tecum* or appropriate court order.

(2) Do not release any record containing information relating to an employee's security or loyalty.

(3) Honor subpoenas and court orders only when disclosure is authorized.

(4) When authorized to comply with a subpoena *duces tecum* or court order, do not leave the originals with the court.

(5) Postal Inspector reports are considered to be confidential internal documents and shall not be released unless there is specific authorization by the Chief Postal Inspector or the Inspector in Charge of the affected field Division, after consulting with Inspection Service legal counsel.

(6) The Inspection Service Manual and other operating instructions issued to Inspection Service employees are considered to be confidential and shall not be released unless there is specific authorization, after consultation with Inspection Service legal counsel. If the requested information relates to confidential investigative techniques, or release of the information would adversely affect the law enforcement mission of the Inspection Service, the subpoenaed official, through Inspection Service legal counsel, may request an *in camera, ex parte* conference to determine the

necessity for the release of the information. The entire Manual should not be given to any party.

(7) Notes, memoranda, reports, transcriptions, whether written or recorded and made pursuant to an official investigation conducted by a member of the Inspection Service, are the property of the Inspection Service and are part of the official case file, whether stored with the official file.

(f) *Compliance with summonses and subpoenas ad testificandum.* (1) If an Inspection Service employee is served with a third-party summons or a subpoena requiring an appearance in court, contact should be made with Inspection Service legal counsel to determine whether and which exemptions or restrictions apply to proposed testimony. Inspection Service employees are directed to comply with summonses, subpoenas, and court orders, as to appearance, but may not testify without authorization.

(2) Postal Inspector reports or records will not be presented during testimony, in either state or federal courts in which the United States, the Postal Service, or another federal agency is not a party in interest, unless authorized by the Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division, who will make the decision after consulting with Inspection Service legal counsel. If an attempt is made to compel production, through testimony, the employee is directed to decline to produce the information or matter and to state that it may be exempted and may not be disclosed or produced without the specific approval of the Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division. The Postal Service will offer all possible assistance to the courts, but the question of disclosing information for which an

exemption may be claimed is a matter of discretion that rests with the appropriate official. Paragraph (e) of this section covers the release of Inspection Service documents in cases where the Postal Service or the United States is not a party.

(g) General procedures for obtaining Inspection Service documents and testimony from Inspection Service employees. (1) To facilitate the orderly response to demands for the testimony of Inspection Service employees and production of documents in cases where the United States, the Postal Service, or another federal agency is not a party, all demands for the production of nonpublic documents or testimony of Inspection Service employees concerning matters relating to their official duties and not subject to the exemptions set forth in paragraph (a) of this section shall be in writing and conform to the requirements outlined in paragraphs (g)(2) and (g)(3) of this section.

(2) Before or simultaneously with service of a demand described in paragraph (g)(1) of this section, the requesting party shall serve on the Counsel, Office of the Chief Postal Inspector, 475 L'Enfant Plaza SW., Washington, DC 20260-2101, an affidavit or declaration containing the following information:

- (i) The title of the case and the forum where it will be heard;
- (ii) The party's interest in the case;
- (iii) The reasons for the demand;
- (iv) A showing that the requested information is available, by law, to a party outside the Postal Service;
- (v) If testimony is sought, a summary of the anticipated testimony;

(vi) If testimony is sought, a showing that Inspection Service records could not be provided and used in place of the requested testimony;

(vii) The intended use of the documents or testimony; and

(viii) An affirmative statement that the documents or testimony is necessary for defending or prosecuting the case at issue.

(3) The Counsel, Office of the Chief Postal Inspector, shall act as agent for the receipt of legal process for demands for production of records or testimony of Inspection Service employees where the United States, the Postal Service, or any other federal agency is not a party. A subpoena for testimony or for the production of documents from an Inspection Service employee concerning official matters shall be served in accordance with the applicable rules of civil procedure. A copy of the subpoena and affidavit or declaration, if not previously furnished, shall also be sent to the Chief Postal Inspector or the appropriate Postal Inspector in Charge.

(4) Any Inspection Service employee who is served with a demand shall promptly inform the Chief Postal Inspector, or the appropriate Postal Inspector in Charge, of the nature of the documents or testimony sought and all relevant facts and circumstances.

(h) *Authorization of testimony or production of documents.* (1) The Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division, after consulting with Inspection Service legal counsel, shall determine whether testimony or the production of documents will be authorized.

(2) Before authorizing the requested testimony or the production of documents, the Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division shall consider the following factors:

(i) Statutory restrictions, as well as any legal objection, exemption, or privilege that may apply;

(ii) Relevant legal standards for disclosure of nonpublic information and documents;

(iii) Inspection Service rules and regulations and the public interest;

(iv) Conservation of employee time; and

(v) Prevention of expenditures of government time and resources solely for private purposes.

(3) If, in the opinion of the authorizing official, the documents should not be released or testimony should not be furnished, that official's decision is final.

(4) Inspection Service legal counsel may consult or negotiate with the party or the party's counsel seeking testimony or documents to refine and limit the demand, so that compliance is less burdensome, or obtain information necessary to make the determination whether the documents or testimony will be authorized. If the party or party's counsel seeking the documents or testimony fails to cooperate in good faith, preventing Inspection Service legal counsel from making an informed recommendation to the authorizing official, that failure may be presented to the court or other body conducting the proceeding as a basis for objection.

(5) Permission to testify or to release documents in all cases will be limited to matters outlined in the affidavit or declaration described in paragraph (g)(2) of this section or to such parts as deemed appropriate by the authorizing official.

(6) If the authorizing official allows the release of documents or testimony to be given by an employee, arrangements shall be made for the taking of testimony or

receipt of documents by the least disruptive methods to the employee's official duties. Testimony may, for example, be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other means allowable by law.

(i) While giving a deposition, the employee may, at the option of the authorizing official, be represented by Inspection Service legal counsel.

(ii) While completing affidavits, or other written reports or at any time during the process of preparing for testimony or releasing documents, the employee may seek the assistance of Inspection Service legal counsel.

(7) Absent written authorization from the authorizing official, the employee shall respectfully decline to produce the requested documents, testify, or, otherwise, disclose the requested information.

(8) If the authorization is denied or not received by the return date, the employee, together with counsel, where appropriate, shall appear at the stated time and place, produce a copy of this section, and respectfully decline to testify or produce any document on the basis of the regulations in this section.

(9) The employee shall appear as ordered by the subpoena, summons, or other appropriate court order, unless:

(i) Legal counsel has advised the employee that an appearance is inappropriate, as in cases where the subpoena, summons, or other court order was not properly issued or served, has been withdrawn, discovery has been stayed; or

(ii) Where the Postal Service will present a legal objection to furnishing the requested information or testimony.

(i) *Inspection Service employees as expert or opinion witnesses.* No Inspection Service employee may testify as an expert or opinion witness, with regard to any matter arising out of the employee's duties or functions at the Postal Service, for any party other than the United States, except that in extraordinary circumstances, the Counsel, Office of the Chief Postal Inspector, may approve such testimony in private litigation. An Inspection Service employee may not testify as such an expert or opinion witness without the express authorization of the Counsel, Office of the Chief Postal Inspector. A litigant must first obtain authorization of the Counsel, Office of the Chief Postal Inspector, before designating an Inspection Service employee as an expert or opinion witness.

(j) *Postal liability.* This section is intended to provide instructions to Inspection Service employees and does not create any right or benefit, substantive or procedural, enforceable by any party against the Postal Service.

(k) *Fees.* (1) Unless determined by 28 U.S.C. 1821 or other applicable statute, the costs of providing testimony, including transcripts, shall be borne by the requesting party.

(2) Unless limited by statute, such costs shall also include reimbursement to the Postal Service for the usual and ordinary expenses attendant upon the employee's absence from his or her official duties in connection with the case or matter, including the employee's salary and applicable overhead charges, and any necessary travel expenses as follows:

(i) The Inspection Service is authorized to charge reasonable fees to parties demanding documents or information. Such fees, calculated to reimburse the Postal

Service for the cost of responding to a demand, may include the costs of time expended by Inspection Service employees, including attorneys, to process and respond to the demand; attorney time for reviewing the demand and for legal work in connection with the demand; expenses generated by equipment used to search for, produce, and copy the requested information; travel costs of the employee and the agency attorney, including lodging and per diem where appropriate. Such fees shall be assessed at the rates and in the manner specified in § 265.9.

(ii) At the discretion of the Inspection Service where appropriate, fees and costs may be estimated and collected before testimony is given.

(iii) The provisions in this section do not affect rights and procedures governing public access to official documents pursuant to the Freedom of Information Act, 5 U.S.C 552.

(l) *Acceptance of service.* The rules in this section in no way modify the requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix) regarding service of process.

Subpart C – Availability of Records

§ 265.14 Rules concerning specific categories of records.

(a) *Records available to the public on request.* Except as otherwise proscribed by law or regulations, including but not limited to paragraphs (b) and (c) of this section, § 265.2 and § 265.11 – § 265.13, Postal Service records will be made available to any person in accordance with the procedures provided in § 265.3.

(b) *Records not subject to mandatory public disclosure.* Certain classes of records are exempt from mandatory disclosure under exemptions contained in the

Freedom of Information Act and in 39 U.S.C. 410(c). The Postal Service will exercise its discretion, in accordance with the policy stated in § 265.1(c), as implemented by instructions issued by the Records Office with the approval of the General Counsel in determining whether the public interest is served by the inspection or copying of records that are:

(1) Related solely to the internal personnel rules and practices of the Postal Service.

(2) Trade secrets, or privileged or confidential commercial or financial information, obtained from any person.

(3) Information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed. This class includes, but is not limited to:

(i) Information pertaining to methods of handling valuable registered mail.

(ii) Records of money orders, except as provided in R900 of the *Domestic Mail Manual (DMM)*.

(iii) Technical information concerning postage meters and prototypes submitted for Postal Service approval prior to leasing to mailers.

(iv) Reports of market surveys conducted by or under contract in behalf of the Postal Service.

(v) Records indicating rural carrier lines of travel.

(vi) Records compiled within the Postal Service which would be of potential benefit to persons or firms in economic competition with the Postal Service.

(vii) Information which, if publicly disclosed, could materially increase procurement costs.

(viii) Information which, if publicly disclosed, could compromise testing or examination materials.

(4) Interagency or internal memoranda or letters that would not be available by law to a private party in litigation with the Postal Service.

(5) Reports and memoranda of consultants or independent contractors, except to the extent they would be required to be disclosed if prepared within the Postal Service.

(6) Files personal in nature, including medical and personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Information prepared for use in connection with proceedings under chapter 36 of title 39, U.S. Code, relating to rate, classification, and service changes.

(8) Information prepared for use in connection with the negotiation of collective bargaining agreements under chapter 12 of title 39, U.S. Code, or minutes of, or notes kept during, negotiating sessions conducted under such chapter.

(9) Other matter specifically exempted from disclosure by statute.

(c) *Records or information compiled for law enforcement purposes.* (1)

Investigatory files compiled for law enforcement purposes, whether or not considered closed, are exempt by statute from mandatory disclosure except to the extent otherwise available by law to a party other than the Postal Service, 39 U.S.C. 410(c)(6). As a matter of policy, however, the Postal Service will normally make records or information compiled for law enforcement purposes available upon request unless the production of these records:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority (such as the Postal Inspection Service) in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(2) Whenever a request is made which involves access to records that could reasonably be expected to interfere with law enforcement proceedings, and

(i) The investigation or proceeding involves a possible violation of criminal law; and

(ii) There is reason to believe that,

(A) The subject of the investigation or proceeding is not aware of its pendency,
and

(B) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Postal Service may, during only such time as that circumstance continues, treat the records as not subject to the requirements of the Freedom of Information Act.

(3) Whenever informant records maintained by a criminal law enforcement agency (such as the Postal Inspection Service) under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the records may be treated as not subject to the requirements of the Freedom of Information Act unless the informant's status as an informant has been officially confirmed.

(4) Authority to disclose records or information compiled for law enforcement purposes to persons outside the Postal Service must be obtained from the Chief Postal Inspector, U.S. Postal Service, Washington, DC 20260-2100, or designee.

(d) *Disclosure of names and addresses of customers.* Upon request, the names and addresses of specifically identified Postal Service customers will be made available only as follows:

(1) *Change of address.* The new address of any specific customer who has filed a permanent or temporary change of address order (by submitting PS Form 3575, a hand-written order, or an electronically communicated order) will be furnished to any person, except that the new address of a specific customer who has indicated on the order that the address change is for an individual or an entire family will be furnished

only in those circumstances stated at paragraph (d)(5) of this section. Disclosure will be limited to the address of the specifically identified individual about whom the information is requested (not other family members or individuals whose names may also appear on the change of address order). The Postal Service reserves the right not to disclose the address of an individual for the protection of the individual's personal safety. Other information on PS Form 3575 or copies of the form will not be furnished except in those circumstances stated at paragraphs (d)(5)(i), (d)(5)(iii), or (d)(5)(iv) of this section.

(2) *Name and address of permit holder.* The name and address of the holder of a particular bulk mail permit, permit imprint or similar permit (but not including postage meter licenses), and the name of any person applying for a permit in behalf of a holder will be furnished to any person upon the filing of a proper FOIA request and payment of any applicable fees. For the name and address of a postage meter license holder, see paragraph (d)(3) of this section. (Lists of permit holders may not be disclosed to members of the public. See paragraph (e)(1) of this section.)

(3) *Name and address of postage evidencing user.* The name and address of an authorized user of a postage meter or PC Postage product (postage evidencing systems) printing a specified indicium will be furnished to any person upon the payment of any fees authorized by § 265.9(b), provided the user is using the postage meter or PC Postage product for business purposes. The request for this information must be sent to the manager of Postage Technology Management, Postal Service Headquarters. The request must include the original or a photocopy of the envelope or wrapper on which the postage meter or PC postage indicium in question is printed, and a copy or description of the contents to support that the sender is a business or firm and

not an individual. (Lists of authorized users of postage meters or PC Postage products may not be disclosed to members of the public.)

(4) *Post Office boxholder information.* Information from PS Form 1093, *Application for Post Office Box or Caller Service*, will be provided as follows:

(i) Except as provided in paragraph (d)(4)(iii) of this section, the boxholder applicant name and address from PS Form 1093 will be provided only in those circumstances stated in paragraphs (d)(5)(i) through (iii) of this section.

(ii) Except as provided in paragraph (d)(4)(iii) of this section, the names of persons listed as receiving mail, other than the boxholder applicant, will be furnished from PS Form 1093 only in those circumstances stated in paragraphs (d)(5)(i) and (iii) of this section.

(iii) When a copy of a protective order has been filed with the postmaster, information from PS Form 1093 will not be disclosed except pursuant to the order of a court of competent jurisdiction.

(5) *Exceptions.* Except as otherwise provided in these regulations, names or addresses of Postal Service customers will be furnished only as follows:

(i) To a Federal, State or local government agency upon prior written certification that the information is required for the performance of its duties. The Postal Service requires government agencies to use the format appearing at the end of this section when requesting the verification of a customer's current address or a customer's new mailing address. If the request lacks any of the required information or a proper signature, the postmaster will return the request to the agency, specifying the deficiency in the space marked 'OTHER'. A copy of PS Form 1093 may be provided.

(ii)(A) To a person empowered by law to serve legal process, or the attorney for a party in whose behalf service will be made, or a party who is acting *pro se*¹, upon receipt of written information that specifically includes all of the following:

(1) A certification that the name or address is needed and will be used solely for service of legal process in connection with actual or prospective litigation;

(2) A citation to the statute or regulation that empowers the requester to serve process, if the requester is other than the attorney for a party in whose behalf service will be made, or a party who is acting *pro se*;

(3) The names of all known parties to the litigation;

(4) The court in which the case has been or will be commenced;

(5) The docket or other identifying number, if one has been issued; and

(6) The capacity in which the boxholder is to be served, *e.g.*, defendant or witness.

(B) By submitting such information, the requester certifies that it is true. The address of an individual who files with the postmaster a copy of a protective court order will not be disclosed except as provided under paragraphs (d)(5)(i), (iii), or (iv) of this section. A copy of Form 1093 will not be provided. The Postal Service suggests use of the standard format appearing at the end of this section when requesting information under this paragraph. When using the standard format on the submitter's own letterhead, the standard format must be used in its entirety. The warning statement and certification specifically must be included immediately before the signature block. If the request lacks any of the required information or a proper signature, the postmaster will return it to the requester specifying the deficiency.

¹ The term *pro se* means that a party is not represented by an attorney but by himself or herself.

(iii) In compliance with a subpoena or court order, except that change of address or boxholder information which is not otherwise subject to disclosure under these regulations may be disclosed only pursuant to a court order.

(iv) To a law enforcement agency, for oral requests made through the Inspection Service, but only after the Inspection Service has confirmed that the information is needed in the course of a criminal investigation. (All other requests from law enforcement agencies should be submitted in writing to the postmaster as in paragraph (d)(5)(i) of this section.)

(6) *Jury service.* The mailing address of any customer sought in connection with jury service, if known, will be furnished without charge upon prior written request to a court official, such as a judge, court clerk or jury commissioner.

(7) *Address verification.* The address of a postal customer will be verified at the request of a Federal, State, or local government agency upon written certification that the information is required for the performance of the agency's duties. "Verification" means advising such an agency whether or not its address for a postal customer is one at which mail for that customer is currently being delivered. "Verification" neither means nor implies knowledge on the part of the Postal Service as to the actual residence of the customer or as to the actual receipt by the customer of mail delivered to that address. The Postal Service requires government agencies to use the format appearing at the end of this section when requesting the verification of a customer's current address or a customer's new mailing address. If the request lacks any of the required information or a proper signature, the postmaster will return the request to the agency, specifying the deficiency in the space marked "OTHER".

(8) *Business/Residence location.* If the location of a residence or a place of business is known to a Postal Service employee, whether as a result of official duties or otherwise, the employee may, but need not, disclose the location or give directions to it. No fee is charged for such information.

(9) *Private mailbox information.* Information from PS Form 1583, *Application for Delivery of Mail Through Agent*, will be provided as follows:

(i) Except as provided in paragraph (d)(9)(iii) of this section, information from PS Form 1583 will be provided only in the circumstance stated in paragraph (d)(5)(iii) of this section.

(ii) To the public only for the purpose of identifying a particular address as an address of an agent to whom mail is delivered on behalf of other persons. No other information, including, but not limited to, the identities of persons on whose behalf agents receive mail, may be disclosed to the public from PS Form 1583.

(iii) Information concerning an individual who has filed a protective court order with the postmaster will not be disclosed except pursuant to the order of a court of competent jurisdiction.

(e) *Information not available for public disclosure.* (1) Except as provided by paragraph (a)(6) of this section, the Postal Service and its officers and employees shall not make available to the public by any means or for any purpose any mailing list or other list of names or addresses (past or present) of postal patrons or other persons.

(2) Records or other documents which are classified or otherwise specifically authorized by Executive Order 12356 and implementing regulations to be kept secret in

the interest of the national defense or foreign policy are not subject to disclosure pursuant to this part.

(3) Records consisting of trade secrets or confidential financial data, the disclosure of which is prohibited by 18 U.S.C. 1905, are not subject to disclosure pursuant to this part.

(4) Other records, the disclosure of which is prohibited by statute, are not subject to disclosure pursuant to this part.

(f) *Protection of the right of privacy.* If any record required or permitted by this part to be disclosed contains the name of, or other identifying details concerning, any person, including an employee of the Postal Service, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, the name or other identifying details shall be deleted before the record is disclosed and the requester so informed.

(g) *Disclosure in part of otherwise exempt record.* Any reasonably segregable portion of a record shall be provided after deleting the information which is neither subject to mandatory disclosure nor available as a matter of discretion.

Change of Address or Boxholder Request Format — Process Servers

Date: _____

Mail To:

Postmaster

City, State, ZIP Code

REQUEST FOR CHANGE OF ADDRESS OR BOXHOLDER INFORMATION NEEDED FOR SERVICE OF LEGAL PROCESS

Please furnish the new address or the name and street address (if a boxholder) for the following:

Name: _____

Last Known Address: _____

Note: Only one request may be made per completed form. The name and last known address are required for change of address information. The name, if known, and Post Office box address are required for boxholder information. **You must enclose a copy of the statute or regulation that empowers you to serve process.** (Not required for attorneys or individuals acting pro se.) If you are a corporation proceeding pro se in state court, you must enclose a copy of the state statute or regulation permitting corporations to proceed pro se.

The following information is provided in accordance with 39 CFR 265.14(d)(4)(ii). There is no fee charged for change of address or boxholder information.

1. Capacity of requester (process server, attorney, party representing self): _____
2. The names of all known parties to the litigation: _____
3. The court in which the case has been or will be heard: _____
4. The docket or other identifying number if one has been issued: _____
5. The capacity in which this individual is to be served (defendant or witness): _____

WARNING: THE SUBMISSION OF FALSE INFORMATION TO OBTAIN AND USE CHANGE OF ADDRESS INFORMATION OR BOXHOLDER INFORMATION FOR ANY PURPOSE OTHER THAN THE SERVICE OF LEGAL PROCESS IN CONNECTION WITH ACTUAL OR PROSPECTIVE LITIGATION COULD RESULT IN CRIMINAL PENALTIES INCLUDING A FINE OF UP TO \$10,000 OR IMPRISONMENT OF NOT MORE THAN 5 YEARS, OR BOTH (TITLE 18 U.S.C. SECTION 1001).

I certify that the above information is true and that the address information is needed and will be used solely for service of legal process in conjunction with actual or prospective litigation.

Signature

Address

Printed Name

City, State, ZIP Code

FOR POST OFFICE USE ONLY

____ No change of address on file

NEW ADDRESS OR BOXHOLDER NAME POSTMARK

____ Moved and left no forwarding address

AND STREET ADDRESS

____ No such address

Address Information Request Format — Government Agencies

(MUST BE ON AGENCY LETTERHEAD)

Date _____

Mail To:

Postmaster

City, State, ZIP Code

Requesting Agency Control Number (if applicable): _____

AGENCY REQUEST FOR ADDRESS INFORMATION

Please furnish this agency with the new address, if available, for the following individual or verify whether or not the address given below is one at which mail for this individual is currently being delivered. If the following address is a post office box, please furnish the street address as recorded on the boxholder's application form.

Name: _____

Last Known Address: _____

I certify that the address information for this individual is required for the performance of this agency's official duties.

(Signature of Agency Official)

(Title)

FOR POST OFFICE USE ONLY

[] MAIL IS DELIVERED TO ADDRESS GIVEN NEW ADDRESS:

[] NOT KNOWN AT ADDRESS GIVEN _____

[] MOVED, LEFT NO FORWARDING ADDRESS _____

[] NO SUCH ADDRESS

[] OTHER (SPECIFY): BOXHOLDER STREET ADDRESS:

Agency return address:

(Postmark/Date Stamp)

Stanley F. Mires,

Attorney, Federal Compliance.

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